with trade or calling. An English case expressly ruled that no such case of justification existed.[22] But in this country though there is little consideration of it in the cases, it has been indicated that liability will not attach where the interference is by way of friendly or neighborly advice, honestly given.[23]

In the recent case of *Hutton* v. *Watters* (Tenn.), 179 S. W. 134, it is held that intentional interference with the business of plaintiff by preventing her from obtaining boarders and by depriving her of boarders by threats and other means not unlawful in themselves is actionable where the circumstances show no justification for defendant's acts. The court in this case criticises *Payne* v. *Railroad* Co.,[24] and expressly overrules it in so far as it is in conflict with the opinion.

It is repeated that no satisfactory rule can be put forward to cover all cases where justification is the deciding element. These notes attempt only to set out what seems to be the main principles and to point to a few instances of their application.

RIGHT OF REMOVAL AS INCIDENT TO THE POWER OF APPOINTMENT AS APPLIED TO STATE OFFICERS.—The conflict of authorities on this question is more apparent than real and is due mainly to a failure to carefully distinguish the different constitutional and legislative provisions on the removal of officers. Hence it is essential to classify the legislation to some degree in order to arrive at the true doctrine controlling the question. And it is well to bear in mind that the power of amotion from office is not a judicial power, but is an administrative one, though it be exercised in a judicial manner.[1]

The class of cases in which a state gives some officer or board power to appoint a subordinate officer and also provides the way in which he shall be removed gives no trouble as it is clear that the statute must be followed; likewise the class in which the statute provides that the incumbent may be removed "for cause" may be dismissed as unequivocal.[2] These two types of legislative provisions should be noted only that they may not be confused with cases

[22] South Wales Miners' Federation *v.* Glamorgan Coal Co., (1905) A. C. 239.

[23] See Walker *v.* Cronin, 107 Mass. 555; West Virginia Transportation Co. *v.* Standard Oil Co., 50 W. Va. 611, 40 S. E. 591, 88 Am. St. Rep. 895, 56 L. R. A. 804.

[24] 13 Lea (Tenn.) 507, 49 Am. Rep. 666. In this case the plaintiff, a storekeeper, had incurred the ill will of the defendant railroad company. The defendant through no reason of benefit to the company but on account of the altercation with the plaintiff forbade its employees to deal with the plaintiff and threatened to discharge those who continued to do so. It was held that no action could be brought for resulting injury to the plaintiff.

[1] State *v.* Superior, 90 Wis. 612, 619, 64 N. W. 304; Nehrling *v.* State, 112 Wis. 637, 645, 88 N. W. 610.

[2] State *v.* City of Duluth, 53 Minn. 238, 55 N. W. 118, 39 Am. St. Rep. 595; McNiff *v.* City of Waterbury, 82 Conn. 43, 72 Atl. 572, 135 Am. St. Rep. 247, 250.

in which a statute confers the power of appointment and says nothing about removal. The question we are to consider is simply whether the right of removal can be implied from or is incident to the power of appointment, when the statute is silent regarding the point, and if so in what cases.

This subject divides itself into two big classes of cases. *First,* where the statute provides no fixed period for the appointee to hold office, and *Second,* where the statute does provide a fixed tenure of office. It is clear, that, if there is any power or right of the appointing power to remove in either of these cases, it must be implied by law as the statute is silent on the question of removal.

It is a well-nigh universal rule where no definite term of office is fixed by statute, that in the absence of a constitutional or general legislative provision to the contrary, the right to remove an encumbent is incident to the power to appoint.[3] As was said by Adams, J., in *People* v. *Durston,*[4] "But it is not essential to the exercise of the power of removal that it be conferred either in the constitution or the statute, for the power to appoint to an office or place where the term or tenure are not defined, necessarily carries with it the power of removal." So pronounced is the implied right to remove, which is an incident to the power of appointment where no definite term is fixed by the statute conferring the power of appointment, that a contract between the person making the appointment and the one he appoints to the effect that the appointee is to hold for a definite term, is void as being contrary to public policy.[5]

But it is also well established that when the statute provides a fixed term or tenure of office the right of removal is not an incident of the power of appointment and the reason for the doctrine seems clear.[6] It must be remembered that the right of removal in the first class of cases is not an express right but one that is implied as an incident to the power of appointment; it is obvious that the power of appointment and removal, or either of them, may be fixed and

[3] Sate *v.* Archibald, 5 N. D. 359, 66 N. W. 234; Horstman *v.* Adamson, 101 Mo. App. 119, 74 S. W. 398; People *v.* Durston, 3 N. Y. S. 522. But see case of Dubuc *v.* Voss, 19 La. Ann. 210, 92 Am. Dec. 526, which holds that the power to remove as incident to the power to appoint does not apply to governors. This case is however clearly contrary to the weight of authority.

[4] *Supra.*

[5] Horstman *v.* Adamson, *supra.* In this case a statute provided that the clerk of the county court could appoint a deputy, but said nothing about the tenure of office. The clerk made a contract with a deputy that he was to continue in office for a certain period. Held, that the contract was void as being contrary to public policy.

[6] State *v.* Rhame, 92 S. C. 455, 75 S. E. 881, Ann. Cas. 1914B, 519; Territory *v.* Ashenfelter, 4 N. M. 85, 12 Pac. 879; Collins *v.* Tracy, 36 Tex. 546; Bruce et al. *v.* Matlock, 86 Ark. 555, 111 S. W. 990. In this case it was said by McCullock, J., as regards the power of the governor of a state, "The right to remove officers does not inhere in the chief executive of the state. Under our system of government, the executive enjoys no prerogative in the sense in which that word is usually employed, he exercises only such powers as are conferred on him by the constitutions or statutes of the state."

regulated by law, as embodied in either the constitution or the statute. So it is clear that the law expressly stated will prevail rather than a right implied as a mere incident to the power of appointment. The question becomes, then, whether provision by statute for a fixed term is such expression of legislative intent to override the merely implied right to remove, as will deny the one appointing the right to remove. The practical unamity of authority hold to this effect.[7]

Therefore when the statute provided that the one appointed shall hold office for a definite term, the appointment confers on the incumbent the right to hold the particular office for the full official period, because the permanence of the official tenure negatives the authority of the appointing officer or board to remove at will. This doctrine was upheld in the recent case of *Commissioners of Sinking Fund* v. *Byars* (Ky), 180 S. W. 380, although the opinion does not go into the reason for the doctrine. In this case a state statute provided that the Sinking Fund Commissioners of the State of Kentucky should have the power to appoint a commissioner of motor vehicles, who was to have his office with the secretary of state and hold office for a term of four years. Nothing was said in the statute regarding removal and when the Board attempted to remove the incumbent of the office the court held that they had no power to remove him because the power of removal is neither incident to nor implied from the power of appointment, when the tenure of office is fixed by statute.

These rules are settled by constitutional provision in some states to the effect that, "when the duration of any office is not provided for by this constitution it may be declared by law, and if not so declared, it shall be held during the pleasure of the authority making the appointment." [8]

STATE ANTI-ALIEN LAWS AS DENYING EQUAL PROTECTION OF THE LAW.—"The principal, if not the sole, purpose of its prohibition (the Fourteenth Amendment to the Federal Constitution) is to prevent any arbitrary invasion by state authority of the rights of persons and property, and to secure to every one the right to pursue his happiness unrestrained, except by just, equal, and impartial laws."[1] Consistent with that provision of the Fourteenth Amendment, which guarantees to any person within the jurisdiction of a state the equal protection of the law, the states have the power to distinguish, select and classify the objects of legislation, and to arrange into different categories the persons who are to be amenable to the law, provided all classes of persons similarly situated are affected alike by its operation, and there is no arbitrary or capricious

[7] See note 6, *supra*.

[8] N. Y. Const., § 3, Art. 10; Cal. Const., § 7, Art.11. See, People *v.* Jewett, 6 Cal. 291; People *v.* Hill, 7 Cal. 97; Bergen *v.* Powell, 94 N. Y. 591; People *v.* Henry, 47 App. Div. 133, 62 N. Y. S. 102.

[1] Field, J. Butcher's Union Co. *v.* Crescent City Co., 111 U. S. 746, 759.